



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,686	11/16/2001	Gil Gavriel Dudkiewicz	051448.0203	1013

7590

07/28/2004

David A. Blumenthal
Foley & Lardner
Suite 3500
2029 Century Park East
Los Angeles, CA 90067-3021

EXAMINER

SALCE, JASON P

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 07/28/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,686

Applicant(s)

DUDKIEWICZ ET AL.

Examiner

Jason P Salce

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-15,17-38,40-53,55-59,61-66,68-73,76-80 and 83-86 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-38,40-53 and 55-58 is/are allowed.
- 6) ☒ Claim(s) 1,3-15,20,21,29-38,40-43,59,61-66,68-73 and 83-86 is/are rejected.
- 7) ☒ Claim(s) 3-5, 8-14, 17-19 and 22-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

1. Applicant's arguments and amendments, filed 5/7/04, with respect to claims 1, 3-15, 17-38, 40-53, 55-59, 61-66, 68-73, 76-80 and 83-86 have been fully considered and are persuasive. The finality of the previous Office Action has been withdrawn and a new ground of rejection is presented below.

Claim Objections

Claim 65 is objected to because of the following informalities: The claim recites "the alert banner", which should read "an alert banner". Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 3-14, 29-38, 40-43, 59, 61-65, 73 and 76-79 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The following claims are related to functional descriptive material, which is not technologically embodied. The claims simply recite a method for executing the steps of an abstract idea (See MPEP 2106 IV Section B1).

To expedite a complete examination of the instant application the claims rejected under 25 U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four statutory categories of invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ismail et al. (U.S. Patent No. 6,614,987) in view of Weissman et al. (U.S. Patent No. 6,560,678).

Referring to claim 1, Ismail discloses receiving metadata describing program event (television attribute data 107 in Figure 1), the metadata that describes a programming event being comprised of values corresponding to each of the categories (see Column 3, Lines 47-48), and descriptive data (see either program type data at Column 3, Line 44 or program title data at column 3, Line 46).

Ismail also discloses that the categories are arranged in a hierarchy comprising at least a set of top-level categories (see Column 6, Lines 13-14 for a theme), respective sets of first level sub-categories each corresponding to and encompassed by a top-level category (see Column 6, Lines 13-14 for a sub-theme).

Ismail also discloses ranking the programming events in accordance with viewing preferences expressed in at least one viewer profile (see Column 10, Lines 1-9 for ranking programs in accordance with ratings information stored in the user preference database 116 in Figure 1).

Ismail also discloses that the viewer profile is comprised of preference scores associated with categories of the classification hierarchy, and a keyword (see Column 6, Lines 53-67 and Column 7, Lines 1-67 and Column 8, Lines 1-14 for the contents stored in preference database 116, which consists of categories and values (where the values MOVIE and COMEDY are a theme and sub-theme in a classification hierarchy, described above) which are then combined to make a category-value pair. Ismail also discloses that the viewer profile also comprises a keyword (see either categories keyword "stars" at Column 7, Line 12 or value keyword Titanic at Column 7, Line 18).

Ismail also discloses that the ranking is performed such that programming events having keyword matches are ranked higher than programming events not having keyword matches, and programming events not having keyword matches are ranked based upon category matches (see Column 10, Lines 15-27, where user specified (keyword) matches are performed first and category matching is performed after all possible types of keyword matching).

Ismail fails to disclose a second sub-level of categories each corresponding to and encompassed by a first level sub-category. Weissman discloses organizing categories for programming events with a top, first and second level sub-categories (Root, Sports, Baseball in Figure 2A).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the classification hierarchy of Ismail, to include another level of sub-categories, as taught by Weissman, for the purpose of providing a system

with the capability of maintaining information variety in terms of the types of information of interest to individual consumers (see Column 1, Lines 29-32 of Weissman).

Ismail also fails to specifically disclose that the metadata comprises goodness of fit scores by only describing "values corresponding to each of the categories".

Weissman also discloses an importance factor that is used for organizing (ranking) the categories in the memory (see Column 8, Lines 1-2 and Table 1).

At the time the invention was made, it would have been obvious of a person of ordinary skill in the art, to modify the metadata, as taught by Ismail, using the importance factor, as taught by Weissman, for the purpose of storing only selected portion of transmitted information that is of interest to individual consumers (see Column 1, Lines 26-29 of Weissman).

Referring to claim 15, see the rejection of claim 1.

5. Claims 6-7, 20-21, 59, 61-66, 68-73, 76-80 and 83-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ismail et al. (U.S. Patent No. 6,614,987) in view of Weissman et al. (U.S. Patent No. 6,560,678) in further view of Alexander et al. (U.S. Patent No. 6,177,931).

Referring to claim 6, Ismail and Weissman disclose all of the limitations in claim 1. Additionally, Ismail discloses that the metadata further comprises a time of the corresponding programming event (see Column 5, Line 22). Ismail fails to disclose determining a programming alert schedule in accordance with said ranking of the programming event and the time of the programming events (Ismail only discloses generating category-value pairs and ranking the information for recording purposes (see

Column 6, Lines 18-20 and Column 10, Lines 6-9). Alexander discloses just one example of setting a recording schedule (see Column 11, Lines 12-16 and Lines 23-28), which Ismail also discloses. Further Alexander discloses that on-screen notifications (alerts) can be displayed before a program is recorded, for example, 2 minutes before it airs (see Column 14, Lines 48-67 and Column 15, Lines 1-3).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the recording system, as taught by Ismail and Weissman, using the notification schedule system, as taught by Alexander, for the purpose of providing improved viewer control of video recording of future-scheduled programming (see Column 2, Lines 6-7).

Claim 7 corresponds to claim 6, where Ismail discloses only recording programs within a specified time period based on information in the viewer profile (preference database 116) (see Column 9, Lines 59-67 and Column 10, Lines 1-6).

Referring to claims 20-21, see the rejection of claims 6-7, respectively.

Referring to claim 59, see the rejection of claims 1 and 6. Note that Alexander displays a notification of the user, of the program that is going to be recorded or broadcasted, therefore the alert is inherently displayed otherwise the user would not even receive the notification.

Referring to claim 61, see the rejection of claim 1 for score values used in the ranking process.

Referring to claim 62, Ismail, Weissman and Alexander fail to disclose that a programming event is broken up into segments. The examiner takes Official Notice that

Art Unit: 2611

it is well known create an alert schedule for both complete and segmented television programs. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the system of Ismail, Weissman and Alexander, using segmented television programs, for the purpose of allowing a user to recognize only portions of a television program that is of specific interest to the user (for example avoiding commercials).

Referring to claims 63-64, see the rejection of claim 6.

Claim 65 corresponds to claim 59, where Alexander discloses a number of ways of displaying an alert in banner form (see Column 15, Lines 4-22).

Referring to claim 66, see the rejection of claim 59.

Referring to claims 68-72, see the rejection of claims 68-72, respectively.

Referring to claim 73, see the rejection of claims 59 and 62.

Referring to claims 76-79, see the rejection of claims 61 and 63-65, respectively.

Referring to claim 80 and 83-86, see the rejection of claims 73 and 76-79, respectively.

Allowable Subject Matter

6. Claims 29-38, 40-53 and 55-58 are allowed.

The following is an examiner's statement of reasons for allowance:

Referring to independent claims 29 and 44, the prior art of record fails to anticipate or rendered obvious that the ranking further comprises using either descriptive or keyword metadata and a keyword from a viewer profile to determine rank based upon keyword matching. Ismail, Weissman or Alexander teaches this limitation.

Art Unit: 2611

Specifically, Ismail teaches ranking category data using various types of information (including keyword data), but when the actual ranking process is executed (see Column 10, Lines 15-27 of Ismail), the keyword used is one specified by the user input, not one contained in the incoming metadata, therefore, there is no keyword data being used from a viewer profile, only data specified by the user.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Claims 3-5, 8-14, 17-19 and 22-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 15, 2004


CHRIS GRANT
PRIMARY EXAMINER